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 † PATENT AGENT
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FACSIMILE COVER SHEET

TO: Sherry Brinkley

COMPANY: PTO

DESTINATION FACSIMILE NUMBER: 703-308-6916

FROM: David Allred

FAX RECEIVED
 OCT 22 2003

DATE: October 22, 2003

PETITIONS OFFICE

NUMBER OF PAGES: 20
 (DOES NOT INCLUDE COVER)

MESSAGE: Confirmation of Interference filed is attached for 09/578,001

IF YOU DO NOT RECEIVE ALL OF THE TRANSMITTED PAGES, PLEASE CALL (480) 655-0073. THANK YOU.

CLIENT/MATTER: ROWL-9955

The information contained in or attached to this facsimile message is attorney's PRIVILEGED AND CONFIDENTIAL information intended only for the person or entity named above. If you are not the intended recipient (or someone responsible to deliver it to the intended recipient), please be aware that any dissemination or copying of this communication is STRICTLY PROHIBITED. If you receive this communication in error, please notify us by telephone immediately at (480) 655-0073.

#25

Practitioner's Docket No. ROWL-9955**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: McClain et al.

Serial No.: 09/578,001 Group No.: 1755

Filed: May 24, 2000 Examiner: Elizabeth D. Wood

For: METHOD AND APPARATUS FOR PRODUCING AN AQUEOUS PAINT COMPOSITION FROM
A PLURALITY OF PREMIXED COMPOSITIONSDate of mailing "Notice of Allowance and
Base Issue Fee Due" July 28, 2003
Batch No. _____**FAX RECEIVED****OCT 22 2003**Mail Stop 313(c)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**PETITIONS OFFICE**

NOTE: Petitions to withdraw patent applications from issue (37 C.F.R. 1.313, M.P.E.P. § 1308) are decided by the Deputy Assistant Commissioner of Patents. M.P.E.P. § 1002(b). Letters requesting that the application be withdrawn from issue for purposes of interference with a patent (see M.P.E.P. § 1101.02(f)) require the approval of the Group Director, M.P.E.P. § 1003.

WARNING: Papers requesting that an application be withdrawn from issue after the issue fee is paid, and any papers associated with the petition, including papers necessary for filing a continuing application, may be addressed as above or be hand-carried to the Office of Petitions, at Two Crystal Park, Suite 913, April 14, 1993, 1150 T.M.O.G. 27-28.

PETITION FOR WITHDRAWAL FROM ISSUE (37 C.F.R. 1.313)**PETITION**

1. Applicant hereby petitions for the immediate withdrawal of this application from issue under either 37 C.F.R. 1.313(c).

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

deposited with the United States Postal Service
with sufficient postage as first class mail in an
envelope addressed to the Commissioner for
Patents, Alexandria, VA 22313.

transmitted by facsimile to the Patent and
Trademark Office.

FACSIMILE

Signature

Heather ClarkDate: October 7, 2003

Heather Clark
(type or print name of person certifying)

PATENT ISSUE FEE**2. The issue fee for this case***(complete (a) or (b))*

- (a) [] has NOT been paid, but is due for payment on _____.
(b) [X] has been paid on August 8, 2003.

(complete the following, if known)

This application is scheduled to

[] issue on _____
[] as patent _____.

NOTE: "While the specific time period varies, an allowed application generally receives a patent number and issue date within two weeks after the issue fee is received in the Patent and Trademark Office." M.P.E.P. 1308.

REASON(S) FOR WITHDRAWAL REQUEST

NOTE: "When the issue fee has been paid, the application will not be withdrawn from issue for any reason except: (1) A mistake on the part of the Office; (2) A violation of § 1.56, or illegality in the application; (3) Unpatentability of one or more claims; or (4) For interference." 37 C.F.R. 1.313(b).

3. The reason for the request for withdrawal from issue is:*(check applicable item(s) below)*

- (a) [] there has been a mistake on the part of the Office.
(b) [] there has been a violation of Section 1.56, or illegality in the application.
(c) [] one or more of the claims are unpatentable.
(d) [X] for purposes of declaring an interference.
(e) [] other.

Further details as to the reason(s) for this withdrawal request are set forth on the attached 1 sheet(s).

PETITION FEES

NOTE: The fee need only be paid, if the reason for withdrawal is not the fault of the Office. 37 C.F.R. 1.313(a).

4. The petition fee (37 C.F.R. 1.17(i)) is paid as follows:

- [x] Enclosed is a check in the sum of \$130.00.
[] Charge Account 19-0513 the sum of \$130.00.
A duplicate of this petition is attached.



Signature of Practitioner

Reg. No.: 42,342

Kenneth C. Booth

(type or print name of practitioner)

Tel. No.: (480) 655-0073

18 E. University Drive, Suite 101

Customer No.: ROWL-9955

Mesa, Arizona 85201-5946

Plus 1 Added Page

FAX RECEIVED**PETITION FOR WITHDRAWAL FROM ISSUE (37 C.F.R. 1.313) OCT 22 2003****ADDED PAGE FOR REASON(S)****PETITIONS OFFICE**

Applicants request immediate withdrawal of the present application from issue under 37 C.F.R. 1.313(c) even though the issue fee has been paid because Applicants were not aware that an interference should have been provoked with interfering claims. Due to information, noted below, that has recently come to Applicants' attention, withdrawal of the present application from issue by the Patent Office under the initiative of the Applicants is hereby requested.

1. Applicant became aware of U.S. Patent No. 6,531,537 B2 having claims to the same invention as the present application.

A. The patent was issued March 11, 2003 (less than a year ago as required by 35 USC 135(a))

B. The present application was filed on May 24, 2000, before the pre-grant publication of the patent, which occurred on January 10, 2002. (Thus, the requirements of 35 USC 135(b) do not pertain to this application.)

C. Unless an Interference is provoked between the present application, with its May 24, 2000 filing date, and the issued claims of U.S. Patent No. 6,531,537 B2, Applicants will be significantly limited in their ability to provoke an interference with that patent because 35 USC 135(b) will impose significant restrictions on the claims that can be made in any other related application.

2. The issued claims in the patent could have been claimed in the present application.

A. Although Applicants have an earlier priority date by more than 1 year for the subject matter claimed by Patent No. 6,531,537 B2, the claims of the patent provide rights in that invention to another. Applicants' disclosure, though it uses slightly different language, discloses the same examples for its components and those in the issued patent.

3. There are no other related application(s) in which the patent claims could be presented without changing the thrust of those related applications. Furthermore, Applicants may be restricted from presentation of claims having the same or substantially the same subject matter in any related application under 35 USC 135(b) because all such related applications were filed or will be filed after the publication date of the patent. Alternatively stated, the present application is the only application that can avoid the requirement of 35 USC 135(b) by virtue of its filing date. In view of the nature and scope of the patent claims having an effective filing date more than one year after the effective filing date of the same subject matter in Applicants' application, Applicants need to provoke an interference in the present application with its 5/24/00 filing date.

Hence, Applicants hereby petition the commissioner to withdraw the present application from issue.

(use additional pages, if necessary)

Added Page 1

(Petition for Withdrawal from Issue (37 C.F.R. 1.313)—page 4 of 3)

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CHARLES T. WATTS ††

* OTHER THAN ARIZONA BAR
 † PATENT AGENT
 †† RETIRED

October 22, 2003

Ms. Sherry Brinkley
 United States Patent Office
 P.O. Box 1450
 Alexandria, VA 22313-1450

Via facsimile: 703-308-6916

FAX RECEIVED
 OCT 22 2003

**Re: Confirmation of Interference filed for Serial No.: 09/578,001
 Our File No.: ROWL-9955**

PETITIONS OFFICE

Dear Ms. Sherry Brinkley:

Per your instructions, the following sheets include copies of items 1, 2, 3, 6, 7, and 8 listed on the postcard receipt as evidence of the paper filed October 7, 2003. The first several pages of item 4 "interference", (which should have been listed as "amendment"), are also included for clarification. The entire amendment and exhibits are not being faxed since they comprise approximately 200 pages and are in the possession of the Office, as evidenced by the post card receipt.

Based on the accompanying copies it is requested that the above referenced application serial No. 09/578,001 be immediately withdrawn from issue in order to avoid publication and issuance on the scheduled date October 28, 2003 (next Tuesday). (The fact that we received an Issue Notification indicating the issue date and serial number appears to be due to an error on the part of the Publication Division of the Office in that they did not forward the petition to the Office of Petitions.) Therefore, withdrawal of the above referenced application from issue is requested on the basis of the copies included herewith.

Very truly yours,

SCHMEISER, OLSEN & WATTS

David E. Allred
 Reg. No.: 47,254

DEA/hc
 Attachments

Docket No.: ROWL-9955

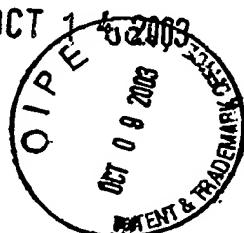
Inventor: McClain Examiner: Wood, E.
Serial No. 09/578,001 Filed On: 05/24/00 Art Unit: 1755

Law Firm: Schmeiser, Olsen & Watts LLP

Title: **METHOD AND APPARATUS FOR PRODUCING
AN AQUEOUS PAINT COMPOSITION FROM A
PLURALITY OF PREMIXED COMPOSITIONS**

ENCLOSED PLEASE FIND:

- RECEIVED OCT 14 2003
1. Postcard;
2. Transmittal Letter;
3. Petition for Withdrawal From Issue;
4. Interference;
5. Exhibits;
6. Associate Power of Attorney(s) forms;
7. Request for Continued Examination; and
8. Check enclosed for \$3,133.00 total fees.

Sent via First Class Mail on October 7, 2003.

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PETITIONS OFFICE

Docket No.: ROWL-9955

Inventor: McClain Examiner: Wood, E.
 Serial No: 09/578,001 Filed On: 05/24/00 Art Unit: 1755

Law Firm: Schmeiser, Olsen & Watts LLP

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Sent via First Class Mail on October 7, 2003.

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 MESA, ARIZONA 85201-5946
 (480) 655-0073

NORTHERN TRUST BANK OF AZ, N.A.
 1525 SOUTH GREENFIELD ROAD
 MESA, ARIZONA 85206

4939

91-521/1221

***** Three Thousand One Hundred Thirty Three & 00/100 Dollars

DATE	AMOUNT
10/07/03	*****3,133.00

Commissioner for Patents

PAY
TO THE
ORDER
OF


A handwritten signature in black ink, appearing to read "Albert Schmeiser". Below the signature, the words "AUTHORIZED SIGNATURE" are printed in a smaller, sans-serif font.

#004939# 10122105210#

#1611005171#

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Response Transmittal

In re application of: McClain

Serial No.: 09/578,001

Filed: 05/24/00

For: **METHOD AND APPARATUS FOR PRODUCING AN
AQUEOUS PAINT COMPOSITION FROM A
PLURALITY OF PREMIXED COMPOSITIONS**

Mail Stop 313(c)
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing in the above-identified Application is a:

1. Petition for Withdrawal from Issue
2. Interference;
3. Exhibits;
4. Associate Power of Attorney(s) forms; and
5. IDS with copies of cited art.

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OCT 22 2003

 CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

 CERTIFICATE OF MAILING

I hereby certify that I am depositing the enclosed or attached correspondence with the United States Postal Service as first class mail in an envelope addressed to Mail Stop 313(c), Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450,

on October 7, 2003


Heather Clark

The fee has been calculated as shown below:

PETITIONS OFFICE

(Col. 1)	(Col. 2)	(Col. 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR
TOTAL 241	MINUS	60 = 181
INDEPENDENT 29	MINUS	6 = 23
<input checked="" type="checkbox"/> PETITION TO WITHDRAWAL FROM ISSUE		
<input checked="" type="checkbox"/> REQUEST FOR CONTINUED EXAMINATION		

Small Entity	
RATE	ADDITIONAL FEE
x \$ 9.00=	\$ 1,629.00
x \$43.00=	\$ 989.00
\$130.00	\$ 130.00
\$385.00	\$ 385.00
Total	
\$ 3,133.00	

A check in the amount of \$3,133.00 to cover fees is enclosed.

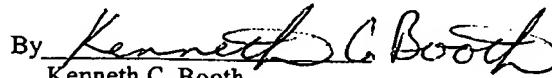
The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0513. A duplicate copy of this sheet is enclosed.

Any additional filing fees required under 37 C.F.R. §1.16.

Any patent application processing fees under 37 C.F.R. §1.17.

Date: October 7, 2003

Respectfully submitted,

By 
Kenneth C. Booth
Registration No.: 42,342

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